

1 filed Motion to Dismiss could make Hubb's later-filed motion scheduled for hearing on the same day
 2 entirely moot. In addition to the pending Motion to Dismiss, there is also a pending action in the
 3 District of Vermont which could also render Plaintiff's motion moot before August 1, 2007. This
 4 motion is based on the following Memorandum of Points and Authorities, the Declaration of Mark
 5 Good, and the pleadings and papers filed herein.

6 MEMORANDUM OF POINTS AND AUTHORITIES

7 **I. FACTUAL BACKGROUND**

8 microDATA filed a lawsuit in the District of Vermont against Hubb on May 10, 2007, and
 9 provided Hubb with notice of that lawsuit on the same day. Eleven (11) days later, on May 21, 2007,
 10 Hubb filed the instant lawsuit against microDATA in this Court involving identical parties and
 11 issues. Hubb did not file a Notice of Pendency of Other Action regarding the prior-filed Vermont
 12 action, as required by Civil Local Rule 3-13.

13 On June 11, 2007, microDATA filed a Motion to Dismiss in this Court based on the first-to-
 14 file rule and on lack of personal jurisdiction, with a hearing on its motion scheduled for August 1,
 15 2007. On June 14, 2007, microDATA also filed, in the District of Vermont, a Motion to Enjoin
 16 Hubb from prosecuting the action in this Court.

17 On June 22, 2007, without responding in any way to the prior-filed and pending microDATA
 18 motions in California or Vermont, Hubb filed a Motion for a Preliminary Injunction against
 19 microDATA, scheduled for hearing on the same day as microDATA's previously-filed Motion to
 20 Dismiss.

21 **II. REASONS FOR EXTENSION OF TIME / HARM THAT WILL OCCUR**

22 By virtue of the facts that (1) Hubb was on notice of microDATA's existence as early as
 23 January 3, 2007;¹ (2) Hubb did not seek to obtain a preliminary injunction against microDATA until
 24 more than five months later, and (3) once Hubb finally did file its motion for preliminary injunction,
 25 it did not seek to schedule a hearing on its motion until August 1, 2007, Hubb cannot reasonably
 26 argue that it is in any danger of immediate and irreparable injury should the hearing on its motion be
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28 ¹ See Declaration of Mark Good ("Good Dec."), ¶ 2, Exhibit A; Plaintiff's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, page 3, line 25.

1 delayed for 30 days, as requested by microDATA.

2 Postponing the hearing date on Hubb's motion will, on the other hand, promote judicial
3 economy as neither the Court nor the parties will be required to prepare for a motion that may be
4 rendered entirely moot if either microDATA's pending Motion to Dismiss in this Court, or
5 microDATA's Motion to Enjoin pending in the District of Vermont, is granted.

6 **III. EFFORTS TO OBTAIN A STIPULATION FOR TIME EXTENSION**

7 Further to microDATA's letter to the Court of June 26, 2007 requesting an extension of
8 time, counsel for microDATA also contacted Hubb's counsel via telephone on June 27, 2007.
9 Hubb's counsel advised that he had read the letter to the Court, and did not intend to respond.
10 When asked if Hubb would stipulate to a continuance of its motion for preliminary injunction,
11 counsel declined to so stipulate.²

12 **IV. PREVIOUS TIME MODIFICATIONS / EFFECT ON CASE SCHEDULE**

13 There have been no previous time modifications in this case. The effect granting of this motion
14 on the case schedule will be to eliminate unnecessary preparation and briefing required for the current
15 August 1, 2007 preliminary injunction hearing, given the fact that either of two distinct motions
16 currently pending in both this Court and the District of Vermont may render Hubb's motion for
17 preliminary injunction moot. Hubb's motion is premature, and it makes sense to stay the hearing and
18 briefing schedule on it, until the pending Motion to Dismiss in this Court is properly resolved.

19 **V. CONCLUSION**

20 For the reasons stated above, microDATA respectfully requests that the Court extend the
21 briefing schedule and hearing date on Hubb's motion for preliminary injunction, pending a ruling
22 on microDATA's prior-filed Motion to Dismiss.

23 Dated: June 29, 2007

TERRA LAW LLP

24
25 By: /s/ Mark W. Good
Mark W. Good
26 Attorneys for Defendant microDATA GIS, Inc.
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28 ² See Good Dec., ¶ 3.